

# AN OPPORTUNITY MISSED:

HOUSE DEMOCRATS AND THE  
9/11 COMMISSION RECOMMENDATIONS



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## **An Opportunity Missed:** Executive Summary

**"On the first day we control Congress, we will begin by passing all of the 9/11 Commission recommendations"** --House Minority Leader Pelosi (D-CA)

--Congress Daily PM, 10/30/06

It was a promise repeated by the House Democratic leadership and rank-and-file Members across the country—once in the Majority, they would immediately implement all the remaining recommendations of the 9/11 Commission. Despite the fact that Republicans had already taken action on an overwhelming majority of the recommendations, the promise seemed to provide a good security sound bite. And the American people took them at their word.

But now, just several days into the 110<sup>th</sup> Congress, the Majority Leadership is backing away from this key security promise. During a press conference on Thursday, December 14, 2006, Speaker Pelosi admitted that she did not plan to implement all of the 9/11 Commission Recommendations. And with the adoption of the House Rules package on Friday, January 5, 2007, it became apparent that the Majority Party would not keep its promise—for they decided against consolidating House jurisdiction over the U.S. Department of Homeland Security, a key recommendation of the 9/11 Commission.

Finally, with the introduction of their homeland security bill, House Democrats made it clear that they were reneging on their commitment in several key areas. And the procedure established for the bill broke another promise: their pledge to have “open, full and fair debate” on all matters before the House. By foregoing the committee process and refusing to allow amendments, the Majority Party is breaking with the clearly established practice of having full committee process and open debate on almost every major piece of homeland security legislation that has come before the House in the past two years. This includes the SAFE Port Act, Reauthorization of the Patriot Act, Homeland Appropriations measures including FEMA Reform and Chemical Plant Security, the Faster Smarter Funding for First Responders Act, and the Border Protection, Antiterrorism, and Illegal Immigration Control Act, among others. Given the importance of homeland security as a national issue, this bill deserves the same process and review.

Homeland security is far too important an issue to play games with. Unfortunately, it appears that is what the Majority has chosen to do with the 9/11 Commission recommendations.



## **An Opportunity Missed:** **In Their Own Words**

**“Democrats have a new direction for the American people -- one that will fully implement the recommendations of the 9/11 Commission and make the security of the American people a top priority.”**

--Speaker Nancy Pelosi (D-CA), Press Release, 6/13/06

**“In fact, in our first 100 legislative hours in office, we have a bipartisan and achievable plan to... pass all the recommendations made by the bipartisan and independent 9/11 Commission.”**

--Speaker Pelosi Letter to The Editor, USA Today, 10/27/06

**“Our goal is to restore accountability, honesty and openness at all levels of government.”**

--Democratic Declaration, 12/12/06

**“We are committed to fully implementing all of the recommendations of the bipartisan 9/11 Commission.”**

--Majority Leader Steny Hoyer (D-MD), Op-Ed, Washington Examiner, 11/16/06

**“...to get serious about breaking our dangerous dependence on foreign oil, and enacting the recommendations of the 9/11 Commission.”**

--Democratic Caucus Chairman Rahm Emanuel (D-IL), Speech, 11/8/06

**“What we have not done is ask the questions, and we deserve criticism for not having had oversight, not having asked questions.”**

--Chairman Emanuel remarks on the House Floor, Congressional Record, 11/18/05

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## **An Opportunity Missed:** **Failing to Implement the 9/11 Commission Recommendations**

When the Democrats adopted their House Rules package on Friday, January 5, 2007, they failed to enact a key recommendation of the 9/11 Commission: consolidating House jurisdiction over the U.S. Department of Homeland Security. This is the first of several security shortfalls, as it has become apparent they do not intend to implement all the 9/11 Commission recommendations.

### **Jurisdiction for Homeland Security**

**The 9/11 Commission stated: “Congress should create a single, principal point of oversight and review for homeland security.”**

In the 109<sup>th</sup> Congress, House Republicans took the important first step of making the Committee on Homeland Security a standing committee; but there are still 10 other House committees that have jurisdiction over the Department of Homeland Security. The Majority could enact this change with a simple rule change, and there is no excuse that it is not being done.

The past two years have shown us that diffuse jurisdiction hampers the ability of the House to show consistent leadership on homeland security legislation and oversight. Furthermore, the large number of committees of jurisdiction forces Department officials to spend an inordinate amount of time testifying before, and responding to, requests of committees and subcommittees across the Hill. Make no mistake, this is severely detrimental to our national security, for the more time Department heads spend testifying before Congress, the less time they spend implementing and improving domestic security measures. The 9/11 Commission recognized this as a clear problem and specifically directed the House and Senate to establish one primary committee of jurisdiction for DHS. The Democrats have thus far refused to do so.

### **Jurisdiction for Intelligence**

**The 9/11 Commission stated: “Of all our recommendations, strengthening Congressional oversight may be among the most difficult and most important.... Congressional oversight for intelligence—and counterterrorism—is now dysfunctional.”**

Speaker Pelosi has announced that she will create a third panel to oversee intelligence community funding—yet all this does is add another layer of bureaucracy to intelligence oversight. This is an ill-conceived idea, as this proposal will fail to address the shortcomings of intelligence and homeland security jurisdiction.

Pelosi’s proposal falls short of the 9/11 recommendations because it diffuses intelligence oversight and increases bureaucracy through creation of an additional congressional panel to which intelligence agencies are forced to report. The ratio of



authorizers and appropriators on the panel is not what the 9/11 Commission envisioned, and the proposal only weakens oversight by causing confused reporting and increasing the burden of congressional reports on our nation's intelligence agencies during a time of war. Additionally, the Senate has not agreed to encumber its intelligence oversight by creation of a similar panel.

Furthermore, the proposed intelligence appropriations panel itself has no real appropriations power. It only has the ability to make recommendations to the appropriators, who can choose to completely ignore those recommendations. As experience with homeland security shows, spreading legislative and oversight jurisdiction to additional committees hampers the ability of the Congress to oversee critical programs. The Democrats are reneging on two 9/11 Commission priorities in an area uniquely within their control – House organization.

#### Paramilitary Operations Declassifying the Intelligence Budget

Following the release of the 9/11 Commission report, Republicans acted on principle in working to implement an overwhelming majority of the 41 recommendations, those they believed were in the best interests of the American people. The two notable exceptions were transferring paramilitary operations to the Department of Defense (DoD)—which was rejected by the President—and declassifying the top-line intelligence budget—which was rejected by both the President and Members of Congress. While well-intentioned, both recommendations were deemed to be potentially harmful to the security of the homeland.

Despite these objections, the Democrats promised to implement all the remaining 9/11 recommendations, including transferring paramilitary operations to DoD and declassifying the intelligence budget. Perhaps they have changed their minds and now agree with the Republican position on these two recommendations; regardless, they are failing to act on their promise of implementation as these two recommendations remain unfulfilled.

### Duplicating Republican Initiatives

In other cases, they seem to be duplicating previously-passed initiatives, attempting to tout them as fresh ideas. Among others, this includes:

#### Risk-based funding

Under our leadership, the House overwhelmingly passed the Faster, Smarter Funding For First Responders Act, most recently in the 109<sup>th</sup> Congress by a vote of 409-10.



The 9/11 Commission cited risk-based grants as a top priority, stating that Congress would have received an 'A' grade if the House bill were to be signed into law.

### Interoperability

It is interesting to note that while the Majority has proposed a multi-billion dollar grant program for interoperability, every single House Democrat failed to support an almost identical Republican initiative in the 109<sup>th</sup> Congress. The 2005 Budget Reconciliation included a \$1 billion dollar grant program specifically for interoperability and emergency communications—yet 200 Democrats voted against both the House bill (H.R. 4241, Roll Call #601) and the Conference Report (S. 1932, Roll Call #670). Despite their opposition, the measure passed and will provide \$1 billion in interoperability grants to first responders this year.

### Scanning of Cargo Containers

Congress enacted a comprehensive Cargo Container Screening Pilot Program (the Secure Freight Initiative) as part of the SAFE Port Act, signed into law in October 2006. The pilot program, initiated by DHS in December 2006 at seven major ports around the world, will evaluate the feasibility of conducting 100% scanning of cargo containers for nuclear and radiological material at foreign seaports, requiring detailed evaluation of the pilots prior to full-scale implementation, including an assessment of effectiveness in detecting a shielded nuclear weapon, and regular reporting to Congress.

Furthermore, while 100% scanning makes for a good sound byte, it is unrealistic to impose the mandate before the pilot program has been completed and the results are analyzed. Right now, the technology simply does not exist to achieve 100% scanning without drastically interrupting the global supply chain. Until the technology exists, it is counterproductive and unrealistic to mandate 100% scanning overseas. The Washington Post itself ran an editorial on June 1, 2006, saying “‘inspect 100 percent of containers’ is a slogan, not a solution, and we hope lawmakers resist the temptation to use it.”



## **An Opportunity Missed:**

### A History of Votes on the 9/11 Commission Recommendations

House Democrats actually have a history of opposing the 9/11 Commission recommendations. This includes:

#### Tracking Terrorist Financing

The 9/11 Commission stated, “The government has made significant strides in using terrorism finance as an intelligence tool.”

- Yet 174 voted No on H. Res. 895 (109<sup>th</sup> Congress), legislation supporting intelligence and law enforcement programs that track terrorists, and condemning—with proper Congressional oversight—the publication of any classified information that could potentially impair the fight against terrorism.

#### Creation of Homeland Security Committees

The 9/11 Commission stated, “The House and Senate have taken positive steps, but Secretary Chertoff and his team still report to too many bosses. The House and Senate homeland security committees should have exclusive jurisdiction over all counterterrorism functions of the Department of Homeland Security.”

- Not only did every single House Democrat vote against making the Committee on Homeland Security permanent at the beginning of the 109th Congress, they opposed the creation of the Department of Homeland Security in the first place, with 120 voting against the Homeland Security Act of 2002.

#### The REAL ID Act

The 9/11 Commission stated, “The REAL ID Act has established standards for state-issued IDs acceptable for federal purposes, though states’ compliance needs to be closely monitored.”

- Yet 152 voted No on the REAL ID Act (H.R. 418, 109<sup>th</sup> Congress), legislation which federally standardizes the requirements for applying and issuing state identification cards.

#### Border Security

A prominent issue addressed by the 9/11 Commission,

- 164 voted against H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act, which was passed by the House in December 2005.



- 131 voted against H.R. 6061 (109<sup>th</sup> Congress), the Secure Fence Act of 2006, an emergency measure that would mandate operational control of all borders and ports through enhanced Border Patrol operations, physical barriers, and state-of-the-art technology along the southwest border, including reinforced fencing.
- 134 voted against H.R. 6095 (109<sup>th</sup> Congress), the Immigration Law Enforcement Act of 2006, a bill that would reaffirm the authority of State and local law enforcement to enforce immigration laws, authorize an increase in methods to prosecute alien smugglers, and end the policy of “Catch and Release” in the United States.
- 91 voted against H.R. 6094 (109<sup>th</sup> Congress), the Community Protection Act, which would authorize the expedited removal of criminal aliens, the detention of these dangerous criminals who—for various reasons—might not be able to be immediately deported, and tougher laws against illegal immigrants found to be members of street gangs.

#### The Military Commissions Act of 2006

The 9/11 Commission stated that the U.S. should develop “a common coalition approach toward the detention and humane treatment of captured terrorists... for those cases in which the usual laws of war did not apply.”

- However, 162 House Democrats voted against the Military Commissions Act, S. 3930, which was signed into law on October 17, 2006. The bill establishes guidelines for the detention and trial of terror suspects, allowing the United States to interrogate and put to trial high-level terror suspects that may hold information vital to the security of our country.

#### The 9/11 Recommendations Implementation Act (H.R. 10, 108<sup>th</sup> Congress)

The 9/11 Commission called for a major overhaul of the U.S. intelligence community, including the establishment of a Director of National Intelligence (DNI) and a National Counter-Terrorism Center (NCTC).

- Yet 125 House Democrats voted against H.R. 10, the 9/11 Recommendations Implementation Act, which later became law as the Intelligence Reform and Terrorism Prevention Act of 2004. The bill established the responsibilities and duties of the Director of National Intelligence and ensured that our intelligence agencies had access to information they needed to accomplish their missions. In addition, the bill set guidelines for the intelligence community during the development stages of the NCTC.



## **An Opportunity Missed:** **Conclusion**

**“I’m disappointed that, on such an important issue, there’s a complete lack of debate and proper committee process. Homeland Security legislation is too vital—and this is too encompassing a bill—to be rushed through in such a trivial manner.”**

--Committee on Homeland Security Ranking Member Peter T. King, on the Democrats’ 9/11 Commission bill, 1/4/06

Despite their promises to implement all the remaining 9/11 Commission Recommendations and have the most open and honest Congress in history, House Democrats have opened the 110<sup>th</sup> Congress refusing to do either. This is in stark contrast to the years of the Republican-controlled Congress following Sept. 11, 2001. During that time, Republicans took action on 39 of the 41 recommendations, abiding by proper committee process and open debate in almost every instance. Major reforms included: the USA Patriot Act, the Intelligence Reform and Terrorism Prevention Act of 2004; the Homeland Security Act of 2002; the SAFE Port Act; the REAL ID Act; the Aviation Transportation Security Act; the Maritime Transportation Security Act; and the creation of the Committee on Homeland Security itself.

It is our full intent to build upon these important accomplishments in the 110<sup>th</sup> Congress—and we need to be given the chance to do so through proper oversight, committee process, and floor procedures. After all, homeland security is far too important an issue to play games with. American lives are at stake, and it will take continuing, bipartisan oversight and legislative efforts to ensure the continued security of the homeland.

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